

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN DOE,

Plaintiff,

v.

COLUMBIA UNIVERSITY, and TRUSTEES OF
COLUMBIA UNIVERSITY,

Defendants.

23-CV-10393 (DEH)

ORDER OF SERVICE

DALE E. HO, United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under 42 U.S.C. § 1981, Title VI and Title IX of the Education Amendments of 1972, the New York Adult Survivors Act, and other state laws. He asserts discrimination on the basis of his race and sexual orientation. Plaintiff also submits a “Motion to Proceed Pseudonymously.” (ECF No. 3.) By order dated December 5, 2023, the court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis* (“IFP”). For the reasons discussed below, the Court grants Plaintiff’s motion to proceed under the pseudonym “John Doe,” directs the Clerk of Court to seal the complaint, and directs service on the Trustees of Columbia University in the City of New York (“Columbia”).¹

DISCUSSION

A. Proceeding Under a Pseudonym and Under Seal

Plaintiff, who identifies himself as an “openly gay African-American male,” seeks to proceed under a pseudonym in this action, asserting that the complaint “includes sensitive health information regarding a sexual assault, and medical and psychiatric treatment for these assaults,

¹ Columbia University is officially incorporated under the name “The Trustees of Columbia University in the City of New York,” and is therefore the sole defendant in this case. *See Doe v. Columbia Univ.*, ECF 1:19-CV-11328, 21, at 1 n. 1 (S.D.N.Y. Jan. 22, 2020).

which could have deleterious consequences if this information became public record.” (ECF No. 3, at 1.)

In December 2019, Plaintiff filed a substantially similar action against Columbia University. *See Doe v. Columbia Univ.*, No. 19-CV-11328 (JPO) (S.D.N.Y. May 29, 2020) (“*Doe I*”). He also sought to proceed under the pseudonym “John Doe.” After making a “factor-driven balancing inquiry,” and “weighing competing interests,” *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 190 (2d Cir. 2008), Judge J. Paul Oetken found that Plaintiff had “demonstrated that a substantial privacy right [was] at issue outweighing the customary presumption of openness in judicial proceedings,” *Doe I*, No. 1:19-CV-11328, 9, at 2 (S.D.N.Y. Dec. 17, 2019). Judge Oetken therefore granted Plaintiff’s request to proceed under the pseudonym “John Doe.” Furthermore, although Plaintiff had not requested that the complaint be sealed, Judge Oetken directed the Clerk of Court to seal the complaint and other documents, finding “that the potential harm that may result if [the complaint and other submissions were] available for public view outweighs the presumption in favor of public access.” *Id.* at 4.

As in *Doe I*, Plaintiff’s present complaint contains serious allegations of sexual assault and provides the full names of multiple students who were allegedly involved in acts of a personal and sensitive nature. For the same reasons stated by Judge Oetken, the Court finds that the privacy right at issue and the potential harm that may result if Plaintiff’s complaint is available for public view outweighs the presumption in favor of openness in judicial proceedings and public access. The Court therefore grants Plaintiff’s motion to proceed as John Doe and directs the Clerk of Court to seal the complaint.²

² The Clerk of Court, as a precaution pending the Court’s ruling on Plaintiff’s motion to proceed under a pseudonym, has limited electronic docket access to Plaintiff’s complaint to “court users and case participants.”

B. Service on Columbia

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.³ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

To allow Plaintiff to effect service on Defendant Columbia through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for this defendant. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendant.

If the complaint is not served within 90 days after the date the summons is issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Court grants Plaintiff’s motion to proceed pseudonymously (ECF No. 3) as John Doe. The Court further directs the Clerk of Court to place the complaint under seal.

³ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

The Clerk of Court is also instructed to issue a summons, complete the USM-285 form with the address for Trustees of Columbia University in the City of New York, and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Clerk of Court is also directed to mail a copy of this order to Plaintiff, together with an information package and Judge Ho's Individual Practices in Civil Pro Se Cases.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 5, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'Dale E. Ho', is written over a horizontal line.

DALE E. HO
United States District Judge

DEFENDANT AND SERVICE ADDRESS

Trustees of Columbia University in the City of New York
Office of the General Counsel
Columbia University
412 Low Memorial Library
535 West 116th Street
New York, NY 10027

OCTOBER 2023

Individual Practices in Civil Pro Se Cases

Dale E. Ho, United States District Judge

Pro Se Office

United States District Court
Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square / 40 Centre Street
Room 105
New York, NY 10007
(212) 805-0175

Unless otherwise ordered by the Court, these Individual Practices apply to all civil cases involving pro se litigants (that is, litigants without counsel) before Judge Ho.

1. Resources for Pro Se Parties

- a. Court Website.** Pro se parties are directed to the Court's website (<https://www.nysd.uscourts.gov/prose/role-of-the-prose-intake-unit/contact>) for other important information concerning proceeding pro se in this Court.
- b. Pro Se Law Clinic.** There is a Pro Se Law Clinic in this District to assist non-incarcerated people who are parties in civil cases and do not have lawyers. The Clinic may be able to provide a non-incarcerated pro se litigant with advice in connection with his or her case. The Pro Se Law Clinic is run by a private organization called the New York Legal Assistance Group ("NYLAG"); it is not part of, or run by, the Court (and, among other things, therefore cannot accept filings on behalf of the Court, which must still be made by any unrepresented party through the Pro Se Office).

An unrepresented party can make an appointment with NYLAG through NYLAG's website (<https://nylag.org/gethelp/>) by completing an intake form online or via smartphone, available at https://nylagoi.legalservice.org/modules/matter/extern_intake.php?pid=142&h=cea984&; by visiting the kiosk at the Courthouse; or by calling (212) 659-6190 and leaving a message. The Clinic is located in the Thurgood Marshall United States Courthouse, 40 Centre Street (also known as "40 Foley Square"), New York, New York, in Room LL22, which is just inside the Pearl Street entrance to that Courthouse. Under normal circumstances, the Clinic is open on weekdays from 10 a.m. to 4 p.m., except on days when the Court is closed.

2. Communications with Chambers

- a. **No Communications to Chambers.** All communications with the Court by a pro se party should be in writing and filed on ECF, emailed as a PDF, delivered in person, or physically mailed as described in Section 3(b) below. No documents or court filings may be sent directly to Chambers. Unless the Court orders otherwise, all communications with the Court will be docketed upon receipt; such docketing shall constitute service on any user of the ECF system. If any other party is not a user of the ECF system (e.g., if there is another pro se party in the case), a pro se party must send copies of any filing to that party and include an Affidavit of Service or other statement affirming that it has done so. Copies of correspondence between a pro se party and opposing parties shall not be sent to the Court. Any questions should be directed to the Pro Se Office at (212) 805-0175.
- b. **Contact Information.** Pro se parties are required to maintain their current mailing address on the docket at all times and must notify the Court of any change of address by filing a change of address form with the Pro Se Office.
- c. **Communications by Parties Represented by Counsel.** Except as otherwise provided below, communications with the Court by a represented party shall be governed by Judge Ho's Individual Practices in Civil Cases, available at <https://nysd.uscourts.gov/hon-dale-e-ho>.
- d. **Requests for Rescheduling a Conference or Extensions of Time.** All requests to reschedule a conference or extend a deadline must be made in writing and must state: (1) the original date(s) of the conference or deadline; (2) the reasons for the requested extension; (3) whether the other party or parties consent and, if not, the reasons given for refusing to consent; and (4) the date of the next scheduled appearance before the Court as well as any other existing deadlines. Requests for extensions of deadlines regarding a matter that has been referred to a Magistrate Judge shall be addressed to that assigned Magistrate Judge.

Absent an emergency, any request for an extension or to reschedule a conference must be made at least two business days prior to the deadline or scheduled appearance.

3. Filing of Papers and Service

- a. **Consent to Receive Electronic Service.** To ensure timely service of

documents, including Court Orders, non-incarcerated pro se parties are encouraged to consent to receive electronic service through the ECF System. To do so, a pro se party should review the instructions available at https://www.nysd.uscourts.gov/sites/default/files/2021-03/Consent_Pro-Se_Eservice-Instructions.pdf, and then submit a Consent to Electronic Service (available at https://www.nysd.uscourts.gov/sites/default/files/2021-03/Consent_Pro-Se_Eservice-form.pdf).

b. Papers Filed by a Pro Se Party. A pro se party may file papers with the Court by:

- i. delivering them in person to the Pro Se Office, Thurgood Marshall Courthouse, 40 Centre Street (40 Foley Square), Room 105, New York, NY 10007;
- ii. mailing them to Pro Se Office at: United States District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007, ATTN: Pro Se Intake;
- iii. emailing them as an attachment in PDF format to Temporary_Pro_Se_Filing@nysd.uscourts.gov, in which case the pro se party should follow the instructions contained in the April 1, 2020, Addendum to the Court's ECF Rules & Instructions, available in Appendix C at <https://www.nysd.uscourts.gov/electronic-case-filing>; or
- iv. filing them on the ECF System if the pro se party has filed a motion to participate in ECF (available at <https://nysd.uscourts.gov/sites/default/files/2019-04/2012-prosemotionecffiling-final.pdf> and in the Pro Se Office) and been granted such permission by the Court.

c. Service on a Pro Se Party. Absent a pro se party consenting to receipt of electronic service, counsel in pro se cases must serve a pro se party with a paper copy of any document that is filed electronically and must file with the Court a separate Affidavit of Service. Submissions filed without proof of service that the pro se party was served will not be considered.

4. Discovery

a. Discovery Requests Should Not be Sent to the Court. All requests for discovery by a pro se party should be sent to counsel for the party from whom discovery is sought.

- b. Discovery Disputes.** If there are any discovery disputes, the parties are required to confer with one another to try to resolve the dispute without the need for Court intervention. If the parties are unable to resolve their dispute, either party may file a letter-motion, no longer than three pages and in accordance with Section 2 above, explaining the nature of the dispute and requesting an informal conference. If the opposing party wishes to respond to the letter, it must promptly file a responsive letter, not to exceed three pages.

5. Motions

- a. Filing and Service.** Unless otherwise ordered by the Court, papers filed in opposition to a motion must be served and filed within 30 days of service of the motion papers, and reply papers, if any, must be served and filed within two weeks of receipt of opposition papers.
- b. Pro Se Notices.** Parties who file a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment must provide the pro se party with a copy of the notices required under Local Civil Rules 12.1 or 56.2.
- c. Special Rule for Summary Judgment Motions.** With respect to any deposition that is supplied in connection with a summary judgment motion, the index to the deposition should be included if it is available.
- d. No Courtesy Copies.** Unless the Court orders otherwise, parties should not submit courtesy hard copies of any submissions in pro se cases.

6. Conferences

- a. Notice and Scheduling.** Notices scheduling a court conference will be docketed on ECF and mailed to the pro se party or parties. Conferences may be held remotely or in person. In-person conferences will be held in Courtroom 905 of the Thurgood Marshall United States Courthouse, 40 Centre Street / 40 Foley Square, New York NY. Absent a motion to dismiss, the Court will generally schedule an initial case-management conference within four months of the filing of the complaint. The Notice of Initial Pretrial Conference will be docketed on ECF and mailed to the pro se party or parties.
- b. Incarcerated Parties.** An incarcerated party may not be able to attend scheduled in-person conferences but may be able to participate by telephone. If an incarcerated party is unable to participate by telephone, a family member or

a representative may attend or otherwise participate in the conference. In such instances, the incarcerated party may write to the Court in advance of the conference regarding any issue the pro se party wishes to have addressed at the conference. If a representative is designated, he or she should contact Chambers at (212) 805-0190 to determine the location of the conference. The Court will also have a transcript of the conference sent to the incarcerated party. If an incarcerated party does not have counsel and a representative cannot attend a conference, the pro se party should write to the Judge regarding any issue the pro se party wishes to have addressed at the conference.

7. Trial Documents

- a. Pretrial Statement.** Unless otherwise ordered by the Court, within 30 days of the completion of all discovery or, if a summary judgment motion is filed, within 30 days of the Court's ruling on summary judgment, the plaintiff in a pro se case shall file a concise, written Pretrial Statement. This Statement must contain the following:

- i. a statement of the facts the plaintiff hopes to prove at trial;
- ii. a list of all documents or other physical objects that the plaintiff plans to put into evidence at trial; and
- iii. a list of the names and addresses of all witnesses the plaintiff intends to have testify at trial.

The Statement must be sworn by the plaintiff to be true and accurate based on the facts known by the plaintiff. If pro se, the plaintiff shall file an original of this Statement with the Pro Se Office. Two weeks after service of the plaintiff's Statement, the defendant must file and serve a similar Statement of its case containing the same information.

b. Other Pretrial Filings.

- i. If the case is to be tried before only a judge without a jury, any parties represented by counsel must also file proposed findings of fact and conclusions of law at the time of filing the Pretrial Statement.
- ii. If the case is to be tried before a jury, any parties represented by counsel must also file proposed *voir dire* questions, a proposed jury charge, and a proposed verdict form at the time of filing the Pretrial Statement.